U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-B-C-

DATE: SEPT. 30, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a special education teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. §1153(b)(2). In addition, the Petitioner seeks a national interest waiver of the job offer requirement that is normally attached to this classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. §1153(b)(2)(B)(i). This discretionary waiver allows U.S. Citizenship and Immigration Services (USCIS) to provide an exemption from the requirement of a job offer, and thus a labor certification, when it serves the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner established his eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief in which he argues that the previously submitted evidence demonstrates his eligibility for a national interest waiver.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> > (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must demonstrate that the national interest would be adversely affected if a labor certification were required by establishing that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

---

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Director determined that the Petitioner qualifies as an advanced degree professional and that his proposed work as a special education teacher has substantial intrinsic merit. The two findings at issue in this matter are (1) whether the Petitioner established that the benefits of such work are national in scope as required under the second prong of the *NYSDOT* national interest analytical framework, and (2) whether he demonstrated sufficient influence on his field to meet the third prong of the *NYSDOT* analysis.

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was employed as a special education teacher at in Georgia. The record indicates that he had worked for in since 2007, after having previously taught in the Philippines since 1987.

In support of the Form I-140, the Petitioner provided evidence of his credentials and experience as an educator. He submitted copies of his academic diplomas and transcripts, documentation showing his certification in Georgia to teach special education, copies of certificates for trainings that he completed, and evidence of his membership in professional associations. He provided letters and employment contracts documenting his work experience in the United States and in the Philippines, and verification of his salary in the United States.

As evidence of his accomplishments as a teacher, the Petitioner submitted copies of certificates of recognition and appreciation, letters of thanks for his teaching, his support of student groups, and honors and awards that he received in recognition for his work with special needs students. The Petitioner also submitted evidence that he received an award as a finalist for the 2012 for the and that he was the recipient of the of the Year 2011 awarded by the In addition, he provided numerous letters from current and former colleagues, supervisors, and parents attesting to his noteworthy dedication and effectiveness as a special education teacher and a mentor to his students.

In a supporting statement, the Petitioner indicated that he had received approval for a research study entitled, The Petitioner explained that this study was in its "data-gathering phase," and that the findings "will be disseminated to local education leaders, legislators both local and federal, and other education stakeholders who could foster legislation that addresses the needs of children with exceptionalities not only in GA but also nationwide."

The Petitioner also submitted a copy of the research proposal endorsed by Principal. The Petitioner stated that, "an article based on the results of the study will be submitted to referred [*sic*] education journal, particularly to the of the " The Petitioner indicated that his "forthcoming contributions will bring benefits not only to the students with moderate intellectual

disabilities/special needs of [redacted] Georgia, U.S., but also provide benefits that could impact on a national scale, particularly to the education stakeholders of the special education program as a whole." We note that the expectations of the Petitioner and [redacted] regarding the possible future national impact of the Petitioner's work are not evidence of his eligibility for this classification. A petitioner must establish eligibility at the time of filing and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). As the Petitioner has not published his research, it cannot establish his eligibility at the time of filing his petition.

The Petitioner further explained that he had created and posted a teacher resource, [redacted] on an online discussion forum for teachers of exceptional children. The Petitioner noted that this posted resource was viewed 20 times and downloaded 16 times, evidencing the national impact of his work. The Petitioner did not indicate who viewed and downloaded this resource, or that once downloaded, it was used by organizations nationwide. The Petitioner also pointed to a lesson that he created in which he developed a "mini store" in his special needs classroom that was then replicated by other teachers in his district and by one other teacher in Maryland. Replication at a localized level, in this case the Petitioner's school in Georgia and a single teacher in Maryland, does not indicate the Petitioner's work has been implemented on a national basis or that it is otherwise national in scope.

The record also included letters of support from individuals within the Petitioner's community. For example, [redacted] attorney at law, and father of one of the Petitioner's students, stated, "[The Petitioner] is highly skilled in adapting lessons in both academic and functional training to a variety of children based on their specific needs. He is creative and dynamic in offering alternative educational methods that build self-confidence and independence." Similarly, [redacted] a former teacher, attested that she has regularly worked with the Petitioner and observed his teaching style and the "strategies and programs which [he] employs." She writes, "His tactics never cease to amaze me." While these letters indicate that the Petitioner is a dedicated and dynamic teacher, they do not support a finding that the Petitioner's work with a small group of students in one school is evidence of national impact.

Several of the Petitioner's fellow teachers also submitted letters of recommendation. [redacted] teacher at [redacted] described how the Petitioner "certainly ranks among the top teachers whose performance for these years have been exemplary as he continues to effect positive changes among his students, his colleagues in general, and the community that he serves." [redacted] a para-educator, with [redacted] indicated that she has worked with many teachers and the Petitioner "exceeds them all." She goes on to state, "I have seen [the Petitioner] work with children of different levels of intellectual and physical abilities and challenges. He works extremely hard developing lesson plans and strategies to meet the students' individual needs."

In denying the Form I-140, the Director acknowledged that the Petitioner's didactic skills have aided his students and noted the complimentary nature of the recommendation letters. However, the

Director found that the he had not shown that the benefits of his proposed work would extend beyond his classroom or district, therefore being national in scope as required under the second prong of the *NYSDOT* analysis. The Director also found that the Petitioner had not demonstrated sufficient influence on his field to meet the third prong.

In his brief on appeal, the Petitioner claims that the Director's conclusion that the record does not show that any of his instructional activities have been realized on a nationwide basis is factually incorrect. The Petitioner points to his work developing a lesson plan which was posted to an online teacher forum, which he states has downloaded 60 times as of August 5, 2013, a significant increase from the 16 times he indicated at the time of filing his petition. The Petitioner asks, "Could not the benefit bestowed by a teacher, or in this case, the petitioner/beneficiary, to his employer, the local school system, and especially to his students impart a substantial benefit, albeit indirect, to the national education system?" In addition, he maintains that his accomplishments are consistent with the level of past achievement required under *NYSDOT*.

A. National Scope

As stated above, the Director concluded that the proposed benefit of the Petitioner's work would not be national in scope. The Petitioner claims on appeal that his development of an online lesson and its dissemination through an online teaching forum evidenced by 60 downloads are sufficient evidence of the national scope of his work. We disagree. The Petitioner has not provided evidence to demonstrate that this lesson has impacted the field on a national level, or has been adopted by independent schools or districts beyond where the Petitioner has taught. For example, there is no evidence of who may have downloaded the lesson or whether it was implemented in any other classrooms, either in the Petitioner's district or beyond, or that 60 downloads is considered significant.[2] This evidence alone, therefore, is not sufficient to establish that the Petitioner's work is national in scope.

With regard to the Petitioner's teaching duties, there is no evidence establishing that the benefits of his work would extend beyond his students and school district such that they will have a national impact. *NYSDOT* specifically addresses this issue: "Similarly, while education is in the national interest, the impact of a single school teacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act." In the present matter, the Petitioner has not shown the his impact as a special education teacher extends beyond and, therefore, is national in scope.

[2] For comparison, the Petitioner provides documentation that another article in the same forum that was published a month earlier, had no downloads and only 29 views. However the Petitioner has not shown that the articles are directed at the same audience and for the same purpose. Thus, there is no accurate basis of comparison for the two articles. Additionally, a comparison to a single article does not establish the national scope of the Petitioner's work.

The Petitioner also claims that his work is national in scope as evidenced by the fact that he has received approval for a research study currently in its "data-gathering phase," and that the findings of this study will be disseminated nationwide. As stated above, future projections of national impact are not sufficient. A petitioner must establish eligibility at the time of filing and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1).

Here, the record lacks evidence which establishes that the Petitioner's work has influenced the field on a national level. None of the submitted documents establish that the Petitioner's specific work as a special education teacher have had a national reach as he has not documented evidence of his impact beyond the school and district where he teaches. A petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. Accordingly, the Petitioner has not established that he meets the second prong of the *NYSDOT* national interest analysis.

B. Influence on the Field

The Petitioner has not demonstrated sufficient influence on his field to satisfy the third prong of the *NYSDOT* analysis. While *NYSDOT* states that a petitioner must demonstrate that the national interest would be adversely affected if a labor certification were required, it goes on to explain that a petitioner makes such a demonstration by establishing that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18. It further clarifies that, to do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6.

On appeal, the Petitioner asserts that he has submitted "certificates/news clippings and other documents of recognition for Outstanding Performance; performance evaluation documents, verification letters and documents of awards for work in the field," and states that "there was no mention or clear explanation as to how these records/documents inadequately measure up to the third factor."

We acknowledge that the Petitioner has submitted documentation of his work at the local level, including evidence demonstrating the positive impact he has had on his own students and school district and awards that he has won. The evidence does not establish, however, that he has had an influence on the field of special education generally. While particularly significant awards may serve as evidence of impact on a field, the Petitioner did not demonstrate that any of the awards or accolades submitted are indicative of such influence. For these reasons, we find the record insufficient to establish that the petitioner has had some degree of influence on the field as a whole.

As described above, the record contains letters of support from teachers and administrators who worked with the Petitioner at [redacted]. The references attest to the Petitioner's talent, dedication, and contributions to his students, but they did not indicate that he has had the wider impact and influence necessary to qualify for the national interest waiver under *NYSDOT*.

For example, [redacted] submitted a letter noting "[The Petitioner's] position at [redacted] is an excellent opportunity to provide teaching innovations for the welfare of the students. I believe he clearly merits your recognition as someone of extraordinary abilities whose work performance has earned not only my respect and admiration but also of his colleagues and administrators, his students and their parents as well. His commitment and dedication to our school and our community is outstanding." Similarly, [redacted] Special Education Teacher, [redacted] says of the Petitioner, "It is not often that one finds a renaissance man such as [the Petitioner] in the area of Special Education . . . His talents and hard-working momentum have raised the bar for excellence for his coworkers and students. This remarkable Special Education Teacher has truly changed the face of Special Education at our school." These references do not provide specific examples of how the Petitioner's work has affected teaching practices outside of [redacted] or has otherwise influenced the field as a whole.

We also note that in his appellate statement, the Petitioner mentions his teaching qualifications and awards as evidence of his impact on the field. Educational degrees, occupational experience, licenses and professional certifications, membership in professional associations, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), (E), and (F), respectively. However, in this instance the Petitioner is seeking a waiver of the job offer as a member of the professions holding an advanced degree. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Pursuant to section 203(b)(2)(A) of the Act, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. Without evidence demonstrating that the Petitioner's work has affected the field as a whole, employment in a beneficial occupation such as a teacher, therefore, does not by itself qualify him for the national interest waiver.

The Petitioner provided copies of his performance evaluations from [redacted] but he does not indicate how the submitted evaluations demonstrate that he has influenced the field to a substantially greater degree than other similary qualified special education teachers. In light of the above, the Petitioner has not established that he meets the third prong of the *NYSDOT* national interest analytical framework.

III. CONCLUSION

Considering the letters of support and other evidence in the aggregate, the Petitioner has not shown that the proposed benefits of his work are national in scope. In addition, the Petitioner has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement. The record does not establish that the Petitioner's work has influenced the field as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. It is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of B-B-C-*, ID 127439 (AAO Sept. 30, 2016)